

BINGHAM

ORIGINAL

NEW APPLICATION



0000077684

RECEIVED

Katie B. Besha
Direct Phone: 202.373.6528
Direct Fax: 202.373.6001
katie.besha@bingham.com

2007 OCT 23 P 12: 06

AZ CORP COMMISSION
DOCKET CONTROL

October 22, 2007

Arizona Corporation Commission

DOCKETED

Via FedEx

OCT 23 2007

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007-2927

DOCKETED BY	
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**Re: Bandwidth.com CLEC, LLC's Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate
Telecommunications Services in Arizona.**

Dear Sir or Madam: **T-20562A-07-0615**

On behalf of Bandwidth.com CLEC, LLC's, enclosed please find an original and thirteen (13) copies of Bandwidth.com CLEC, LLC's Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services in Arizona. Please note that this application will be supplemented shortly with further exhibits, including financial statements, and proposed tariffs.

Please date-stamp the enclosed extra copy of this filing and return it in the attached self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 373-6000.

Respectfully submitted,

Harry Malone
Katie B. Besha

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/72269321.1

If the Applicant wants to provide any type of Non-Customer Owned Pay Telephone ("COPT") telecommunications services in Arizona, provide the Arizona Corporation Commission ("Commission") with information being requested.

Remember that information submitted for a Certificate of Convenience and Necessity ("CC&N") will be made part of the public record (including financial statements). Any information designated as confidential will not be accepted by Docket Control. Mail your original CC&N application plus thirteen (13) copies to Arizona Corporation Commission, Docket Control, 1200 W. Washington Street, Phoenix, AZ 85007-2927.

Make sure you use the Application form dated July 7, 2006. Also, make sure you answer each numbered item and part of the item in each section of the Application form. If you do not use the correct Application form and/or do not completely answer the numbered item(s), Staff will request the Applicant to re-submit the Application form and/or complete any of the numbered item(s) and part of the item in a data request. In order for Staff to review your Application, complete the following form. Thank you.

ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services**

Mail original plus 13 copies of completed application to:

For Docket Control Only:

(Please Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending
in Arizona as an Interexchange reseller, AOS provider,
or as the provider of other telecommunication services.

Type of Service: _____

Docket No.: _____ Date: _____

Date Docketed: _____

Type of Service: _____

Docket No.: _____ Date: _____

Date Docketed: _____

A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and mark the appropriate box(s).

- ☒ Resold Long Distance Telecommunications Services (Answer Sections A, B).
- ☒ Resold Local Exchange Telecommunications Services (Answer Sections A, B, C).
- ☒ Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).
- ☒ Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E)
- ☐ Alternative Operator Services Telecommunications Services (Answer Sections A, B)
- ☐ Other _____ (Please attach complete description)

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

Bandwidth.com CLEC, LLC
4001 Weston Parkway, Suite 100
Cary, NC 27513
(919) 945-1230
(919) 297-1101 (fax)
www.bandwidth.com

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

Bandwidth.com

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

Kade Ross, Executive Vice President
Bandwidth.com CLEC, LLC
4001 Weston Parkway, Suite 100
Cary, NC 27513
Phone: (919) 297-1020
Fax: (919) 297-1101
kross@bandwidth.com

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

Harry Malone
Katie Besha
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006
(202) 373-6000 (Tel)
(202) 373-6001 (Fax)
katie.besha@bingham.com

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Complaint Contact Person:

For purposes of end user consumer inquiries, the contact information will be:

1-800-808-5150 (phone)
919-297-1101 (fax)
customercare@bandwidth.com

The Company Officer Responsible for Customer Service is:

Joe Campbell, Vice President of Operations
Bandwidth.com CLEC, LLC
4001 Weston Parkway, Suite 100
Cary, NC 27513
Phone: (919) 297-1044
Fax: (919) 297-1101

jcampbell@bandwidth.com

(A-7) What type of legal entity is the Applicant? Mark the appropriate box(s) and category.

- ☐ Sole proprietorship
- ☐ Partnership: _____ Limited, _____ General, _____ Arizona, _____ Foreign
- ☒ Limited Liability Company: _____ Arizona, X Foreign
- ☐ Corporation: _____ "S", _____ "C", _____ Non-profit
- ☐ Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).

The officers and directors of Petitioner are as follows:

David Morken, President & Chairman

Henry Kaestner, CEO & Director

Lance Condray, CFO

All officers and directors can be reached at Applicant's principal place of business provided in Section B, above.

3. Indicate percentages of ownership of each person listed in A-8.2.

Bandwidth.com CLEC, LLC is a subsidiary of Bandwidth.com, Inc.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number).
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).

Bandwidth's tariffs will be filed shortly under separate cover.

(A-10) Indicate the geographic market to be served:

☒

Statewide. (Applicant adopts statewide map of Arizona provided with this application).

☐

Other. Describe and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

To their knowledge, neither Applicant nor any of its officers, directors, partners, or managers has been or are currently the subject of any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

To their knowledge, neither Applicant nor any of its officers, directors, partners, or managers has been or are currently the subject of any civil or criminal investigation, or had judgment entered in any judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

☒

Yes

☐

No

Applicant will not prevent its customers from accessing alternative toll service providers or resellers via 1+101XXXX access.

(A-14) Is Applicant willing to post a Performance Bond? Please check appropriate box(s).

☒

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

☒

Yes

☐

No

If "No", continue to question (A-15).

☒

For Local Exchange Resellers, a \$25,000 bond will be recommended.



☒ Yes

☐ No

If "No", continue to question (A-15).

For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If "No", continue to question (A-15).

For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

Applicant will not collect advances, prepayments, or deposits from Arizona customers.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

☒ Yes

☐ No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

Bandwidth has not yet determined whose telecommunications services it will resell. Bandwidth will inform the Commission once this information becomes available, as necessary.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Bandwidth holds authority to provide telecommunications services in California, Florida, Illinois, New York, North Carolina, Ohio, Pennsylvania, and Texas. Bandwidth has requests for authority pending in Georgia and Virginia.

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

Bandwidth does not currently provide telecommunications services similar to those proposed in Arizona.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

Applicant does not have any affiliates that are authorized to provide or provide telecommunications services.

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

- ☒ Decision # 64178 Resold Long Distance
- ☒ Decision # 64178 Resold LEC
- ☒ Decision # 64178 Facilities Based Long Distance
- ☒ Decision # 64178 Facilities Based LEC

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☒ Yes

☐

No

If "No," explain why and give the date on which the Applicant began operations.

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.

5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

Audited financial statements for the most recent two years, will be forwarded to the Commission shortly under separate cover.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

Applicant will rely on the financial resources of its parent company, Bandwidth.com, Inc., a voice and data provider for business incorporated in Delaware.

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.

Bandwidth has not yet compiled its Arizona operating revenue for 2007.

2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.

Bandwidth has not yet compiled its Arizona operating revenue for 2007.

3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

Applicant does not have any Arizona jurisdictional assets used in the provision of intrastate telecommunications services to Arizona customers.

4. If the projected value of all assets is zero, please specifically state this in your response.

The current value of Arizona assets is zero.

5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

The current fair value of the assets is the same as the current net book value.

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(C-1) Indicate if the Applicant has a resale agreement in operation,

☐ Yes

☒ No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐ Yes

☒ No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona.

Bandwidth will be offering a full slate of business voice services in conjunction with our current Internet connectivity options. Telecommunications services in the State of Arizona may be provided through a combination of its own facilities and through the resale of the facilities of other certificated carriers. Applicants have not yet entered into or requested interconnection/resale agreements in Arizona. The timeframe for providing facilities-based interexchange service in Arizona is within the next five years.

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☒ Yes

☐ No

(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☒ Yes

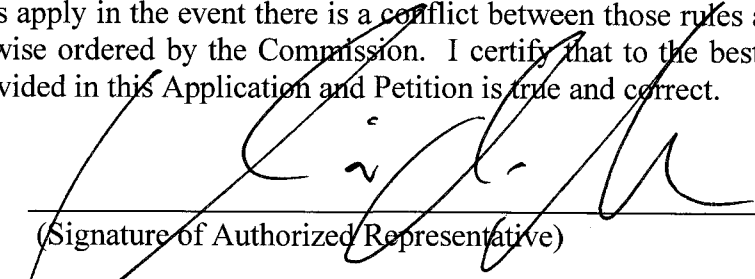
☐ No

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☒ Yes

☐ No

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.


(Signature of Authorized Representative)

10/18/07
(Date)

David Morken

(Print Name of Authorized Representative)

President

(Title)

SUBSCRIBED AND SWORN to before me this 18 day of October, 2007.


NOTARY PUBLIC

Adam Oakley

My Commission Expires 3/12/2012

LIST OF ATTACHMENTS

Attachment A

Certificate of Good Standing

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF REGISTRATION

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Director of the Arizona Corporation Commission, do hereby certify that

*****BANDWIDTH.COM CLEC, LLC*****

a foreign limited liability company organized under the laws of the jurisdiction of Delaware did obtain a Certificate of Registration in Arizona on the 4th day of October 2007.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 9th Day of October, 2007, A. D.




Executive Director

By 

**APPLICATION FOR REGISTRATION
OF A
FOREIGN LIMITED LIABILITY COMPANY**

AZ CORPORATION COMMISSION
FILED

OCT 04 2007

FILE NO. R13991393

**APPLICATION FOR REGISTRATION
OF A FOREIGN LIMITED LIABILITY COMPANY**
Pursuant to A.R.S. §29-802 et seq.

1. The company name must contain an ending which may be "limited liability company," "limited company," or the abbreviations "LLC," "L.C.," "LLC" or "LC". If you are the holder or assignee of a tradename, attach a copy of the tradename certificate. If your name is not available for use in Arizona, you must adopt a fictitious name and provide a resolution adopting the name, which must be signed by a manager, member or authorized agent.

2. Provide the name of the state or jurisdiction under whose laws your company was formed.

3. Provide the date on which your company organized in the state or jurisdiction under whose laws it was formed.

4. Provide the general character of business you plan to transact in Arizona.

5. The statutory agent must provide a street address. If statutory agent has a P.O. Box, then they must also provide a street address/location.

The agent must consent to the appointment by executing this consent.

LL-0005
Rev. 10/2006

1. The name of the foreign limited liability company is:

Bandwidth.com CLEC, LLC

1. a. If the exact name of the foreign limited liability company is not available for use in this state, then the fictitious name adopted for use by the limited liability company in Arizona is:

(FN)

2. The company is organized under the laws of: Delaware

(State)

3. The date of the company's formation is: January 9, 2007

4. The purpose of the company or the general character of business it proposes to transact in Arizona is:
Diversified communications company

5. The name and street address of the statutory agent for the foreign limited liability company in Arizona is:
Corporation Service Company

2338 W. Royal Palm Road, Suite J

Phoenix, AZ 85021

ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT

I, Corporation Service Company, having been designated to act as
(Print Name)

statutory agent, hereby consent to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statutes.

By: Carol Dolor Carol Dolor, Assistant VP
Signature

Corporation Service Company

If signing on behalf of a company, print company name here

**AZ CORPORATION COMMISSION
FILED**

OCT 04 2007

FILE NO. R1399139-3

10331788.1

OCT-04-2007 11:12AM
management structure
will be applicable to
your company.
Provide name, title and
address for each
person.

FROM-ACCUSEARCH, INC

602 249 0821

T-110 P.003/004 F-217

A ☒ Management of the limited liability company is vested in a manager or managers. The names and addresses of each person who is a manager AND each member who owns a twenty percent or greater interest in the capital or profits of the limited liability company are:

Name: Bandwidth.com, Inc. Name: _____
[] member ☒ manager [] member [] manager
Address: 4001 Weston Parkway Address: _____
City, State, Zip: Cary, North Carolina 27513 City, State, Zip: _____
Name: _____ Name: _____
[] member [] manager [] member [] manager
Address: _____ Address: _____
City, State, Zip: _____ City, State, Zip: _____

7. If the jurisdiction
under the law of which
your company is
formed, you must
provide the address of
the principle office of
the company, in
whatever state or
jurisdiction it is located.

The application must
be signed by a
member, manager or
duly authorized agent.

B ☐ Management of the limited liability company is reserved to the members.
The names and addresses of each person who is a member are:

Name: _____ Name: _____
Address: _____ Address: _____
City, State, Zip: _____ City, State, Zip: _____
Name: _____ Name: _____
Address: _____ Address: _____
City, State, Zip: _____ City, State, Zip: _____

Attach a certificate of
existence or document
of similar import duly
authenticated (within
sixty (60) days) by the
official having custody
of corporate records in
the state, province or
county under whose
laws the corporation is
incorporated.

7. The address of the office required to be maintained in the jurisdiction under the laws of which the company is organized, if required; or, if not required, the address of the principal office of the company is:
2711 Centerville Road, Suite 400, Wilmington, Delaware 19808

Your phone and fax
numbers are optional.

LL:0005
Rev. 10/2006

Executed this 27th day of September, 2007
Signature: David Morkin David Morkin, President of Bandwidth.com, Inc. its Manager
Print Name (Check One) ☐ Member ☒ Manager ☐ Authorized Agent
PHONE: 919-297-1000 FAX: 919-297-1101

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "BANDWIDTH.COM CLEC, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRD DAY OF OCTOBER, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "BANDWIDTH.COM CLEC, LLC" WAS FORMED ON THE NINTH DAY OF JANUARY, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID LIMITED LIABILITY COMPANY IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.



4281536 8300

071078099

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6045159

DATE: 10-03-07